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March 28, 2007

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: September 26, 2006

Case Number: TSO-0436

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization¹ under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." A local DOE Security Office (LSO) suspended the individual's access authorization pursuant to the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should not be restored.

I. Background

The individual has held a DOE security clearance for many years. In February 2006, the LSO conducted a Personnel Security Interview (PSI) with the individual to discuss his use of a government computer to send and receive electronic mail (e-mail) of a sexual nature in correspondence with a foreign national. Three months later, in May 2006, the LSO learned that the individual had been cited for "patronization of prostitution" and had failed to report that incident to the DOE.

In July 2006, the LSO issued a Notification Letter to the individual in which it stated that the DOE has substantial doubt about the individual's continued eligibility to hold a DOE security clearance. In the Notification Letter, the LSO explained how certain derogatory information fell within the purview of one criterion, Criterion L, which is set forth in the security regulations codified at 10 C.F.R. § 710.8 (l).² Upon his receipt of the Notification Letter, the individual

¹ Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

² Criterion L relates in relevant part to information that a person has "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security . . ." 10 C.F.R. § 710.8(l).

exercised his right under the Part 710 regulations and requested an administrative review hearing. On September 26, 2006, the Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case and I conducted an administrative hearing within the time frame prescribed in 10 C.F.R. § 710.25(g).

At the hearing, six witnesses testified. The individual presented his own testimony and that of five other witnesses; the LSO called no witnesses. In addition to the testimonial evidence, the LSO submitted 27 exhibits into the record; the individual tendered four exhibits.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cites one potentially disqualifying criterion as the basis for suspending the individual's security clearance, *i.e.*, Criterion L. To support its reliance on Criterion L, the LSO cites the following information. First, on May 4, 2006, the police cited the

individual for “patronization of prostitution” after the individual allegedly solicited an undercover police officer for sex in exchange for \$100. Second, the individual failed to report to the DOE that he had been arrested or detained by the police and charged with “patronization of prostitution.” Third, between November 2005 and January 2006 the individual used his government computer to communicate via e-mail with a foreign national about matters of a sexual nature.

I find that the LSO properly invoked Criterion L in this case because the individual’s conduct raises several matters of concern. First, as for the individual’s willingness to engage in criminal activity with a woman whom he thought was a prostitute; this behavior casts doubt on his judgment, reliability, and trustworthiness. Second, the individual’s involvement in this criminal activity made him susceptible to blackmail, coercion, exploitation, duress or undue influence. Third, the individual’s conduct demonstrates his willingness to disregard the law and raises an issue whether he will disregard the rules relating to the safeguarding of classified information. With respect to the individual’s failure to follow the DOE’s requirements that he report the arrest or detainment by police on May 4, 2006, and the concomitant charge of “patronization of prostitution,” this behavior also raises questions whether he will disregard the rules relating to the safeguarding of classified information and whether he is reliable and trustworthy. Finally, the individual’s use of the government computer to send and receive e-mail correspondence of a sexual nature with a foreign national heightens the risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

IV. Findings of Fact

The individual has been married three times. His first marriage spanned eight years, from 1970 to 1978, and his second marriage lasted 20 years, from 1978 to 1998. *See* Exhibit (Ex.) 22, Transcript of Hearing (Tr.) at 90. The individual married Wife #3 in March 2004 and they are currently in the midst of divorce proceedings. Tr. at 114. Sometime between 1998 and 2004, the individual began to correspond via e-mail with a woman who lived in a foreign country (the foreign national). *Id.* at 25. The individual claims that he terminated his on-line correspondence with the foreign national after he married Wife #3. *Id.*

According to the individual, Wife #3 asked him for a divorce five times between March 2004 and December 2005, with the first request for a divorce made on their wedding night. *Id.* at 118. The individual claimed that as his third marriage was deteriorating, the foreign national with whom he had previously corresponded initiated e-mail contact with him around November 2005. *Id.* at 119. Between November 2005 and January 2006, the individual used his home computer to exchange “romantic” e-mails with the foreign national. Ex. 15. Afraid that Wife #3 would discover his on-line communication with the foreign national, the individual started using his government computer at work to exchange e-mails with the foreign national. Exs. 3, 15. In total, the individual sent or received 13 e-mail communications with the foreign national from his work computer. Ex. 15. In many of the subject e-mails, the individual shared his marital unhappiness, expressed his affection for the foreign national, discussed intimate matters, told the foreign national that they could be together if Wife #3 divorced him, mused about getting the foreign national a “fiancée visa,” and offered to assist the foreign national in finding employment in the United States. Ex. 15 at 7, 9-10.

Sometime in January 2006, the individual's employer intercepted some of the e-mails that the individual had transmitted from his work computer. Ex. 3. The individual's supervisor confronted the individual and the individual furnished a written statement on January 23, 2006, explaining why he did not consider his e-mail communications with the foreign national to constitute a "close and continuous" relationship that would have required him to report the matter as a "contact with a foreign national."³ Ex. 14. Within days of being confronted by his supervisor, the individual sent the foreign national an e-mail advising her that they could not communicate anymore. Tr. at 23.

In February 2006, the LSO conducted a PSI to discuss the individual's e-mail communications with the foreign national. Ex. 26. During the PSI, the individual stated that the endearing words that he had used in his e-mail communications with the foreign national were deceptive and misleading. *Id.* at 48, 68. He added, "everything I wrote her was a bunch of bunk."⁴ *Id.* at 69. At the end of the PSI, the LSO told the individual that "[i]t is the responsibility of every individual holding a security clearance . . . to avoid situations that could pave the way for possible blackmail." *Id.* at 102. The LSO then asked the individual, "Do you feel susceptible to being blackmailed or coerced because of anything in your past, present or foreseeable future?" *Id.* The individual responded, "Not at all." *Id.* The LSO concluded the PSI by reminding the individual of his responsibilities as a security clearance holder, including the obligation to report all arrests. *Id.* at 103.

Around the time that the individual met with the LSO for his February 2006 PSI, he posted an advertisement on the internet seeking female companionship. *Id.* at 130. No one responded to the individual's personal advertisement until May 2, 2006 when an undercover female police officer posing as a woman whom I will refer to as "J" responded to the on-line posting. *Id.* In the e-mail communications between the individual and "J," the two discussed intimate matters. Ex. 13. Eventually, "J" agreed to a rendezvous with the individual but advised as follows: "And just to give you a few 'details:' for one hour I'm yours to do anything your heart desires for 1 Ben- . . . *Id.* The individual realized at that point that "J" was a prostitute. Tr. at 132. Despite this knowledge, the individual met "J" on May 4, 2006 at what he thought was her apartment. *Id.* When "J" opened the door of her apartment, she stated, "Let's make this clear, this is straight sex for \$100." *Id.* at 134. The individual entered the apartment and sat on the bed. *Id.* When "J" excused herself to enter the bathroom, two men "burst into the room" and identified themselves as police officers. *Id.* The police officers handcuffed the individual, photographed him, and issued him a citation to appear in court on the charge of patronizing a prostitute.⁵ *Id.* at 134-136, Ex. 12.

³ In his statement, the individual generally described his communication with the foreign national as chats that resulted in the exchange of information about their different cultures and holiday greetings. *Id.* His description did not capture the essence of those communications which could more accurately be described as romantic or personal in nature.

⁴ The individual confirmed at the hearing that he had lied to the foreign national and never had any intention of having a relationship with her. Tr. at 127.

⁵ The individual apparently did not know until the administrative review hearing that the police had videotaped and audio-taped what had transpired in the apartment on May 6, 2006 and that the DOE had secured those tapes. The DOE Counsel offered to introduce the tapes into evidence if the individual intended to deny at the hearing that he had been arrested or detained in connection with the May 6, 2006 incident. Upon learning that the DOE Counsel possessed the tapes and would, if necessary, play them at the hearing, the individual's attorney stated that the

The individual did not report the May 4, 2006 incident and the accompanying charge despite having signed four Security Acknowledgement forms⁶ in which he agreed to notify the DOE within five working days of “all arrests, charges (including charges that are dismissed), or detentions by Federal, State, or other law enforcement authorities, for any violation of any Federal law, State law, county or municipal law regulation or ordinance, other than traffic violations for which a fine of \$250 or less was imposed, occurring during any period in which I may hold DOE access authorization . . .” Exs. 18-21. On May 18, 2006, the DOE learned that the individual had been charged with “patronization of prostitution.”⁷ Ex. 11.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual’s eligibility for access authorization, I have been guided by the applicable factors described in 10 C.F.R. § 710.7(c).⁸ After due deliberation, I have determined that the individual’s access authorization should not be restored. I cannot find that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. Testimonial Evidence

1. The Individual’s Testimony

At the hearing, the individual first addressed his e-mail correspondence with the foreign national. He explained that when he received the foreign national’s e-mail in November 2005, his marriage was failing and he was “stressed.” *Id.* at 120. He related that he only wanted to use the foreign national as a sounding board for his marital problems. *Id.* He maintained that he never intended to meet the foreign national despite his statements in the e-mails to the contrary. *Id.* at 126. He reiterated at the hearing what he had told the LSO during the February 2006 PSI,

individual admitted that he had been handcuffed at the apartment. The parties agreed at that point that the tapes did not need to be entered into evidence in this case.

⁶ The individual executed Security Acknowledgements on June 28, 1988, December 15, 1993, February 2, 1999 and October 15, 2003. See Exs. 18-21.

⁷ On August 25, 2006, the court dismissed the charges against the individual because the prosecutors in the case decided not to prosecute the matter. Ex. C. The record reflects, however, that the court directed the individual to pay \$500 to an animal shelter in July 2006. See Ex. A. It is therefore not clear from the record whether there was some kind of agreement, such as a plea agreement, that led to the prosecutor’s decision not to prosecute the case.

⁸ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding his conduct, to include knowledgeable participation, the frequency and recency of his conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for his conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

namely, that he had lied to the foreign national and never intended to have a relationship with her. *Id.* at 127. When queried why he had used romantic language in his e-mail correspondence, the individual responded, “I was alone in this. I had my own marriage, but I was lacking something there, and I wasn’t getting it, and I was looking for it in any place I could.” *Id.* at 128. When asked on cross examination whether he believed that his deception of the foreign national showed a lack of honesty or trustworthiness, the individual stated, “[f]rom a moral aspect . . . I can’t condone it. I was wrong.” *Id.* at 162. He added that “[a]s far as my honesty with the government, no, I don’t think so. I think I’m still a faithful, loyal, government employee, and I think I can be trusted.”⁹ *Id.*

With regard to the incident in May 2006 with “J,” the individual admitted that when “J” told him he could do anything he wanted for \$100, he realized that “J” must be a prostitute. *Id.* at 132. On cross-examination, he admitted that he had two days to reflect on “J’s” offer of sex in exchange for money. *Id.* at 165. In the end, he decided, “Well, that’s easy, that’s \$100. I’ll never see the woman again, it will just be being able to be close to somebody for a short period of time.” *Id.* at 132. He testified that it was a “stupid decision, absolutely ridiculous.” *Id.* at 133. He added that he accepts responsibility for what he did. *Id.* He also related that his behavior was out of character for him and he consulted a psychologist to determine why he had behaved in this fashion. *Id.* at 142. He claimed that the psychologist told him that he was acting out in an improper way. *Id.* He further claimed that his judgment was clouded because of his personal situation at home. *Id.* at 166. He stated that he has addressed the DOE’s concerns about his conduct by seeking counseling, initiating divorce proceedings with Wife #3, and finding a new church.

As for the individual’s failure to report the May 2006 incident, he offered several explanations. First, he claimed that the police officers told him that the citation was like a traffic ticket and that he was not under arrest. *Id.* at 136. Then, he claimed that he did not believe that he was detained because he believed detention meant being placed in a holding cell. *Id.* at 144. Next, he claimed that he thought he had until his court date to report the incident to the DOE. *Id.* at 145. He also claimed that he wanted to tell Wife #3 about the citation before telling the DOE. *Id.* at 147. Finally, he admitted that he was embarrassed and was trying to hide the incident. *Id.* at 145. He also admitted that while he is “super conscientious” at work, he split hairs when it came to his personal conduct. *Id.* at 153. When asked why he should be trusted in light of his behavior, he stated that he has a history of not engaging in this behavior; he recognizes that the behavior was wrong; and he guarantees that it will not happen again. *Id.* at 169.

2. Documentary Evidence

To mitigate the Criterion L concerns at issue, the individual submitted an assessment from a psychologist dated July 17, 2006, and progress notes from two counseling sessions, one on July 31, 2006, and the other on August 31, 2006.¹⁰ Ex. A. The assessment reflects that a psychologist diagnosed him with a Depressive Disorder Not Otherwise Specified (NOS) based

⁹ During the PSI, the individual related that “I separate my personal life from my DOE life” with regard to this matter.

¹⁰ The individual did not present the testimony of the psychologist at the hearing.

on the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition, Text Revision (DSM-IV-TR) published by the American Psychiatric Association. The assessment also reflects a “current score” on Axis V of 51.¹¹ Moreover, the assessment stated that the individual’s score on his PHQ-9¹² “was 15, which is within the moderately severe range of depression.” *Id.* According to the assessment, the individual declined to take an antidepressant to decrease his symptoms; he chose instead to read a handout on depression. *Id.* at 3. The progress notes reflect that the individual had two counseling sessions totaling 1 hour and 45 minutes and that counseling was discontinued on August 31, 2006, when the individual’s mood stabilized. *Id.* at 4, 5.

3. Other Witnesses’ Testimony

Most of the witnesses who testified on the individual’s behalf stated that they were shocked when they first learned that the individual had been arrested or detained for patronizing a prostitute. Tr. at 25. A co-worker who has known the individual for 15 to 16 years testified that he never knew the individual to engage in reckless conduct. Tr. at 21. A friend and member of one of the individual’s former churches testified that the individual is the “straightest arrow” that she has ever met. *Id.* at 61. She related that she was simply horrified when she learned of the allegations at issue in the case. *Id.* at 64. One of the individual’s former wives, Wife #2, testified that the individual’s conduct was “out of character” for him. *Id.* at 96. She opined that “he is a good man, an honest man.” *Id.* She added that he was never unfaithful to her during their 20-year marriage. *Id.* at 92.

Juxtaposed to the testimony of the co-worker, friend, and Wife #2 is the testimony of one of the individual’s subordinates. The subordinate testified that she was not shocked by the allegations at issue given the circumstances surrounding those allegations. *Id.* at 43. First, she stated that she knew that the individual had used on-line dating services to meet women before his marriage. *Id.* She viewed the individual’s decision to meet “J” as “a really unfortunate thing to happen and not like it was something that was planned out.” *Id.* at 44. On cross-examination, the following exchange occurred between the DOE Counsel and the co-worker:

DOE Counsel: When he explained it to you, did he tell you what he thought were the circumstances when he was e-mailing the undercover officer? Was he under any impression that there was going to be any prostitution-like activity . . . ?

Co-worker: No.

DOE Counsel: [That] he was going to have to pay for sex?

Co-worker: No.

¹¹ Axis V rates the overall psychological functioning of a person on a scale of 0-100. See DSM-IV-TR at 32. The scale is frequently referred to as a “Global Assessment of Functioning (GAF) Scale.” *Id.* Scores between 51 and 60 denote moderate symptoms or moderate difficulty in social, occupational, or school functioning. *Id.*

¹² The PHQ-9 is the nine-item depression scale of the Patient Health Questionnaire. See www.depression-primary-care.org/clinician/toolkits/materials/forms/phq9. The PHQ-9 is a powerful tool for assisting primary care clinicians in diagnosing depression as well as selecting and monitoring treatment. *Id.*

DOE Counsel: And you have no reason to doubt his honesty - -

Co-worker: Absolutely not.

Id. at 53-54. Regarding the individual's obligation to report the incident involving "J," the subordinate expressed her opinion that the individual was not obligated to report his detention by the police.¹³ As for the individual's correspondence with the foreign national, the co-worker was not shocked because she knew that he was attracted to women of the foreign national's ethnic background. *Id.* at 52-53. She offered her view that his communication with the foreign national was not akin to communicating with somebody through the government of a sensitive country. *Id.* at 53. She added that the individual was simply "unhappy and seeking companionship through on-line ads." *Id.* at 52. Even though the co-worker was not shocked by the allegations, she characterized the incidents at issue as a "series of unfortunate events" and not indicative of the individual's behavior. *Id.* at 45. Finally, the co-worker opined that the individual is very conscientious about security matters. *Id.* at 47.

The individual's supervisor testified that the individual is an outstanding employee who is committed to protecting classified information. *Id.* at 76. He related that the individual is extremely familiar with the security regulations. *Id.* at 82. The individual told his supervisor that he did not report his citation for "patronization of prostitution" for two reasons: he was not arrested and he was waiting to see if the fine exceeded the \$250 reporting requirement.¹⁴ *Id.* at 86.

Finally, Wife #2 testified that the individual took security matters very seriously at his workplace and was, in fact, "anal about things." *Id.* at 106.

C. Hearing Officer Evaluation of Evidence

It appears from the evidence that the individual's reputation in the workplace, in his community, and among his friends was that of man of integrity who was faithful to Wife #2 and Wife #3, dedicated to his work, and conscientious about his security obligations. It is precisely because of the individual's reputation that most of the witnesses who testified at the hearing expressed shock at the allegations in this case.

In evaluating the evidence, I first considered whether the individual's mental health contributed to the behavior that led to his communications with the foreign national, his involvement in the undercover sting operation with "J," and his failure to fulfill his DOE reporting responsibilities. After carefully considering all the evidence on this matter, I find that the individual has not

¹³ The subordinate's view on this matter is incorrect as the Security Acknowledgements specifically state that security clearance holders must report detentions by Federal, State or other law enforcement authorities. *See* Exs. 18-21. The subordinate's testimony is troubling for several reasons. First, she appears to hold a DOE security clearance and should be familiar with the rules that govern her own conduct. Second, her job responsibilities appear to indicate that she should have working knowledge of her reporting responsibilities. Third, she claimed at the hearing that she had reviewed the DOE policy on this very matter before testifying.

¹⁴ I was surprised that the individual's supervisor, whom I assume holds a DOE security clearance, did not know that the \$250 threshold only pertains to traffic violation fines, and that the reporting requirements not only relate to arrests but to charges and detentions.

mitigated the Criterion L concerns at issue based on the documentation submitted into evidence regarding his mental health. Without being able to question the psychologist, I am unable to determine (1) whether the individual's depression was situational in nature, (2) why someone who manifested the signs of depression in the "moderately severe range" and who is diagnosed with Depressive Disorder NOS on July 17, 2006 would need no further counseling or monitoring after August 31, 2006, (3) why counseling was discontinued when the individual had not completed all the terms of the plan that he agreed to, namely, involvement in a divorce adjustment group, and (4) whether the individual sought counseling for its forensic value in his criminal court proceeding¹⁵ or administrative review hearing as opposed to for assistance grappling with his mental health.¹⁶

I next considered whether the individual's pending divorce from Wife #3 will prevent the conduct at issue from recurring in the future after the divorce is finalized. I am not convinced from the evidence in the record that the change in the individual's marital status from married to single will necessarily ensure that he will not engage in problematic behavior in the future. It appears from the record that the individual engaged in the behavior at issue because he was lonely. The individual did not convince me that he has a structure in place¹⁷ to combat the loneliness in his life which might become accentuated once his divorce is finalized.

Moreover, there are several factors in this case that do not augur in the individual's favor. First, the three issues before me are recent and represent a disturbing display of questionable judgment. Second, I find that there is a pattern which shows the individual's lack of honesty, trustworthiness and reliability. On this matter, I find that the individual exhibited a serious lapse in judgment when he used his government computer 13 times to correspond with a foreign national about matters of a sexual nature. He presented no convincing evidence to explain or mitigate this behavior, behavior which also casts aspersion on his reliability and trustworthiness. In addition, I find that the individual was not forthcoming in his January 23, 2006 e-mail to his supervisor about the content of his e-mail communications with the foreign national. Similarly, I find that the individual was not completely candid with his subordinate about his intent to exchange money for sex in May 2006. I also am troubled by the ease with which the individual admittedly lied to the foreign national about his intentions regarding their future relationship. Moreover, I counted four different explanations for his failure to report the May 2006 incident to the DOE (*i.e.* the police officers told him that the citation was like a traffic ticket; he did not believe that he had been detained; he wanted to tell Wife #3 before informing the DOE; and he was trying to hide the incident). After evaluating the individual's demeanor and considering that he was uniquely situated to know his reporting responsibilities, I find that the only credible explanation for his failure to comply with his reporting responsibilities was that he was trying to hide the May 2006 incident from the DOE. I also find that the individual's failure to report the May 2006 incident was a deliberate choice, not an honest mistake, or due to a lack of training or

¹⁵ I found it curious that the individual stopped counseling six days after the criminal court dismissed the charges at issue in this proceeding.

¹⁶ The evidence regarding the individual's mental health might raise security concerns under 10 C.F.R. § 710.8(h). Since Criterion H is not properly before me, I will make no findings on this matter.

¹⁷ The individual's friend testified about a divorce recovery group that the individual participated in after his divorce from Wife #2. Tr. at 60. I could not accord that testimony any weight because the individual is no longer a member of that church and is not participating in that church's divorce discovery group.

understanding of his reporting responsibilities. As for the security concerns that the individual might be susceptible to blackmail, coercion or duress, I find that the individual's friends and professional colleagues now appear to know about the activities at issue in this proceeding so the likelihood of blackmail, coercion or duress is minimal. However, I am mindful that the LSO asked the individual in February 2006 if he would do anything in the future that could cause him to be susceptible to blackmail and he responded negatively. Then less than three months later, the individual, while married, willingly placed himself in a potentially vulnerable position by arranging to meet with a woman whom he thought was a prostitute.

Finally, I cannot reconcile the dichotomy between the individual's professional and personal lives. It is simply not clear to me that the individual appreciates how his personal conduct can directly impact his job responsibilities.

In the last analysis, I find that the individual has not brought forth convincing evidence to mitigate the security concerns associated with his use of the government computer to communicate via e-mail with a foreign national about matters of a sexual nature; his detention by police in May 2006 and his citation for "patronization of prostitution;" and his failure to report to the DOE that he had been arrested or detained by the police and charged with "patronization of prostitution."

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criterion L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth sufficient evidence to mitigate the security concerns advanced by the LSO. I therefore cannot find that restoring the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Ann S. Augustyn
Hearing Officer
Office of Hearings and Appeals

Date: March 28, 2007